

**IN THE SUPREME COURT
OF OHIO**

IN RE: J.F.,
A MINOR CHILD

Supreme Court Case No. 2007-2239

On Appeal from the Greene County
Court of Appeals, Second District

Court of Appeals Case No. 06-CA-123

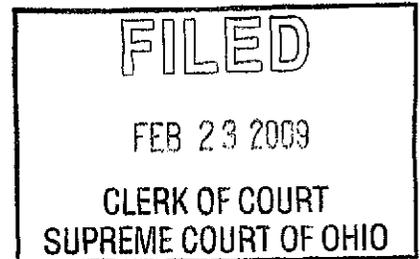
**MEMORANDUM OF APPELLEE - STATE OF OHIO IN OPPOSITION OF
RECONSIDERATION**

STEPHEN K. HALLER #0009172
Greene County Prosecuting Attorney
61 Greene Street, 2nd Floor
Xenia, Ohio 45385

ELIZABETH A. ELLIS #0074332 (COUNSEL OF RECORD)
Assistant Prosecuting Attorney

TX: (937) 562-5669
FX: (937) 562-5107

**COUNSEL FOR APPELLEE,
STATE OF OHIO**



DAVID H. BODIKER, #0016590
State Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215

TX:(614) 466-5394
FX:(614) 752-5167

ANGELA MILLER #0064902 (OF RECORD)
Assistant State Public Defender

COUNSEL FOR J.F.

KATHERINE HUNT FEDERLE, #0069334
Ohio State University Moritz College of Law
Justice for Children Project
55 W. 12th Ave
Columbus, Ohio 43210
TX:(614) 292-9177
FX:(614) 292-5511

**COUNSEL FOR AMICUS CURIAE,
THE JUSTICE FOR CHILDREN
PROJECT**

MEMORANDUM OF APPELLEE - STATE OF OHIO IN OPPOSITION OF RECONSIDERATION

For the following reasons, the appellee respectfully submits that this Court's decision rendered herein was both properly and fully considered and the Motion for Reconsideration should be denied.

A party cannot use a motion for reconsideration to argue its case. The test generally employed when considering a motion for reconsideration is that is proper only when it seeks to call to the attention of the court an obvious error in its decision, or raises an issue that was wither not considered at all or was not fully considered by the court when it should have been. *See State v. Black* (1991), 78 Ohio App. 3d 130, 640 N.E. 2d 171, *qtg. Matthews v. Matthews*(1981), 5 Ohio App. 3d 140, 450 N.E. 2d 278. Further, S.Ct.Prac.R. XI(2)(A) provides that a motion for reconsideration shall be confined to the grounds urged for reconsideration and "shall not constitute a reargument of the case."

The State respectfully submits that the issues raised in Appellant's Motion for Reconsideration were already considered by this Court, and this motion is just an attempt to reargue the case. Despite Appellant's assertions to the contrary, the majority's opinion that unmodified portions of an original order will remain in effect unless otherwise specified is axiomatic and consistent with the jurisprudence of our justice system. Further, the State submits that this Court's opinion in the instant case does not change well-settled law; *In re J.F.* is not in conflict with *In re L.A.B.*, Slip Oinion No. 2009-Ohio-354, *In re C.S.* 115 Ohio St. 3d 267, 2007-Ohio-4919, or *In re Cross*, 96 Ohio St. 3d 328, 2002-Ohio-4138;and *In re J.F.* presents no additional burden to the juvenile justice system throughout the state.

In re J.F. does not encourage trial courts to draft vague and inconclusive entries. To

the contrary, it encourages trial courts to be clear in their sentencing entries because they will remain in effect until expired or modified. To hold otherwise would mean that any time a trial court modifies one portion of a previous entry, they have to modify the entire entry and the words and effect of all previous entries would be meaningless. Basically, the Appellant wants this Court to consider the trial court's termination of probation to be a nunc pro tunc entry for the original dispositional order, which is simply untenable under the facts and circumstances in this case.

I. The decision in *In re J.F.* is consistent with well-settled Ohio law that states a court speaks through its entries.

The Appellant continues to argue that the majority's opinion in the instant case disregards the rule that a court speaks through its journal entries. However, the Appellant refuses to acknowledge that the decision actually gives more weight to the trial court's entries than Appellant would like. *In re J.F.* actually stands for the proposition that when a child's commitment to the Ohio Department of Youth Services is suspended upon myriad conditions, that a subsequent entry noting the completion or termination of one of those conditions does not terminate all of those conditions. Thus, this Court's opinion in the case at bar gives proper deference to all the judgment entries of trial courts, and not just the ones that are convenient for Appellant. If a child is told that he is on monitored time until he is 18, he should expect that he is on monitored time until he is 18 unless he is told otherwise by the court. As previously stated in both this Court and the Second District Court of Appeals, the trial court clearly intended to retain jurisdiction over the child in this case because when probation was terminated, the court re-imposed the order to complete community service and pay the balance of his fines. Again, his commitment was suspended upon the completion of the following

conditions: (1) Appellant not commit any future violations of the law, (2) that he successfully complies with monitored time until the age of 18, (3) that he successfully completes community control, formerly known as probation, (4) that he complete the felony offenders restitution program, (5) that he complete the stop shoplifting program, (6) that he undergo a psychiatric evaluation, and (7) that he pay fines, court costs, and restitution in a timely manner. Clearly, J.F. did not have reason to believe his case was over after the probation was terminated.

II. The decision in the instant case is consistent with this Court's decisions issued in *In re L.A.B.* and *In re C.S.*

This Court remanded this case back to the trial court based upon the Second District's conclusion that J.F.'s due process rights were violated during the hearing on the community control, f.k.a. probation, revocation hearing. *In re L.A.B. and In re C.S.* are cases which discuss due process considerations in juvenile probation revocation hearings and a juvenile's knowing waiver of counsel, respectively. Remanding the case to address these due process considerations is consistent with these two cases. Further, the State is doubtful that these cases have anything at all to do with the ability of a juvenile court to retain jurisdiction over a child which is authorized by statute.

III. *In re J.F.* is consistent with *In re Cross.*

In paragraphs 12-13 of the majority opinion, Chief Justice Moyer writes, "This conclusion is consistent with *In re Cross*, 96 Ohio St. 3d 328, 2002-Ohio-4183, 774 NE 2d 258. The broad authority granted to juvenile courts in former R.C. 2151.355 to place a juvenile on probation subject to 'any conditions that the court prescribes,' survives in R.C. 2152.19, but the term 'probation' is replaced by community control.'...When a court issues an order of community control, the jurisdiction of the court exists only so long as the order itself remains

in effect. *In re Cross*, 2002-Ohio-4183, at ¶27-28. In the absence of a statutory limitation on its duration, an order of community control may be indefinite in duration, lasting until the child reaches age 21, or it may be definite, effective until it expires or is modified by the court. *In re Cross* at ¶27-28; R.C. 2152.22(A). Unmodified portions remain in effect unless otherwise specified.”

Appellant’s complaint that this Court’s holding somehow does not give a child finality in the judgments rendered against them is certainly not new, and thus, is not the proper subject for a motion for reconsideration. Additionally, this Court specifically considered the *Cross* decision and found the holding in the instant case to be consistent with *Cross*.

Moreover, there is nothing in the record to suggest that the Appellant had any expectation that the order of community service or monitored time somehow terminated with the termination of community control. The conclusion that the trial court used probation and community control interchangeably throughout the proceedings can only be construed to show that the Appellant knew that he no longer needed to report for his intensive probation. Nothing more. The assertion that the Appellant believed he was free and clear of all responsibilities remaining from his felonies is simply belied by the record.

Further, the State strongly objects to Appellant’s characterization that it plays a game of “Gotcha” with the lives of juveniles. The State believes that the primary goal of juvenile court is rehabilitation, and that graduated sanctions are sometimes necessary to impress upon juveniles the serious consequences their actions have on their lives, the lives of their victims, their families, and on society as a whole. This is a very serious matter and is not a game. It is the position of the State that, if a child is told at a dispositional hearing that he is not going to

prison based upon a condition that he have no future criminal violations of the law until the age of 18, that order should have some weight and effect.

IV. *In re J.F.* reduces the burden of “strained Ohio juvenile courts.”

Again, this issue was already addressed by the undersigned at oral argument and is not proper for reconsideration. The use of monitored time is an additional sanction that the trial court can impose at disposition for certain at risk-youth, and for those children who comply with the requirements of the court’s orders, it actually reduces the burden on court. Monitored time is essentially non-reporting probation. If this Court were to reconsider and adopt Appellant’s interpretation of this case, the courts and children would be burdened with keeping certain at-risk youth on reporting probation if the court wants to retain jurisdiction over the child.

CONCLUSION

The Appellant has failed to demonstrate that the trial court and appellate court committed error, and failed to show that this Court failed to properly consider the issues. This Court, the appellate court, and trial court have all correctly applied the appropriate legal standard and considered all relevant facts, and have all reached the same conclusion that the trial court retained jurisdiction over the child when it terminated intensive probation, because separate, unexpired conditions of community control were still in effect . Thus, this Court properly and fully considered all issues raised herein. Therefore, the motion for reconsideration must be denied as it does not call the attention of this Court to an obvious error in its decision or to an issue that was not considered by this Court when it should have been.

Respectfully submitted,
OFFICE OF THE GREENE COUNTY
PROSECUTING ATTORNEY

By: Stephen K. Haller
Stephen K. Haller (#0009172)
Prosecuting Attorney

By: Elizabeth A. Ellis
Elizabeth A. Ellis (#074332)
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by regular U. S. Mail the date same as filed of record above to David Bodiker and Angela Miller, State Public Defender, 8 East Long St., 11th Floor, Columbus, Ohio 43215 and Katherine Hunt Federle, The Justice for Children Project, The Ohio State University College of Law, 55 W. 12th Ave, Columbus, Ohio 43210..